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C H A P T E R 23

Administration of Justice

ALAN J. DIMOND

§23.1. General. During the 1958 SURVEY year, the achievements and trends of previous years continued in their prefigured patterns. The full bench of the Supreme Judicial Court decided all its cases before the summer recess; the interval between trial and entry of cases in the Superior Court was again reduced notwithstanding another increase in the number of new entries; uniform forms finally became effective in the Probate Courts; and District Court entries continued to grow.

A. THE SUPREME JUDICIAL COURT

§23.2. Business of the Court. During the court year from September 1, 1957 to August 31, 1958, the full bench of the Supreme Judicial Court decided 268 cases, against 254 for the preceding year and 248 for the year before that. The Court also rendered four advisory opinions. As of the first of July, 1958, all argued cases had been decided.

Jury sittings of the Supreme Judicial Court, at one time a major part of the Court's business, have now become obsolete. Section 17 of Chapter 211 of the General Laws, fixing the times and places of jury sittings in the several counties where jury cases may be pending, has nevertheless remained on the books. Chapter 65 of the Acts of 1958 amends this section by letting the Court determine for itself when and where any jury cases that may arise shall be heard.

B. THE SUPERIOR COURT

§23.3. Business of the court. The 1956 and 1957 ANNUAL SURVEYS discussed new policies and procedures of the Superior Court aimed at speeding up the trial of its cases.¹ These matters included new pretrial procedures, the revival of the auditor system, the installation of the

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§23.3. ¹ 1956 Ann. Surv. Mass. Law §§23.15-23.18; 1957 Ann. Surv. Mass. Law §34.3.

nontriable docket, limitation of continuances because of other engagements of counsel (relaxed in September, 1958), use of District Court judges in motor tort cases, and the establishment of an assignment session. All these tools were again employed during the 1958 SURVEY year. In combination, they again materially increased the pace of the law. Using the same statistical structure of previous years, the following tables show the successful results of the year's work. All figures are for years ending on June 30th.²

TABLE I³

Superior Court Business

	1953-54	1954-55	1955-56	1956-57	1957-58
Undisposed of cases beginning of year	59,504	66,381	66,483	68,739	61,681
Entries during year	33,946	32,366	31,586	35,619	39,030
Dispositions during year	29,015	30,611	32,923	42,209	43,660
Undisposed of cases end of year	64,027	67,416	67,529	59,673	56,972
Undisposed of law cases end of year			61,105	52,356	49,185
Remaining triable law docket end of year			48,702	40,473	36,267

Despite the indicated increase in the number of entries from 31,586 in 1955-1956 to 39,030 in 1957-1958, the interval between the entry and trial of jury cases has been substantially reduced, as the next table shows.

TABLE II

Average Number of Months Interval Between Entry and Trial of Jury Cases

	July 1, 1956	July 1, 1957	July 1, 1958
Barnstable			
Original	23	24	20
Removed	21½	20	9
Berkshire			
Original	29	29	9

² All Superior Court figures, except Table II, were compiled by the office of John A. Daly, Executive Secretary to the Justices of the Supreme Judicial Court. Table II was compiled by the office of Chief Justice Reardon of the Superior Court. Internal discrepancies in Table I, noted in previous SURVEY volumes, have been nearly eliminated. See 1956 Ann. Surv. Mass. Law §23.1; 1957 Ann. Surv. Mass. Law §34.3.

³ Law and equity figures have been combined unless otherwise noted.

	<i>July 1, 1956</i>	<i>July 1, 1957</i>	<i>July 1, 1958</i>
Removed	31	30	9
Bristol			
Taunton			
Original	37	20	8
Removed	29 $\frac{2}{3}$	20	10
New Bedford			
Original	31	21	18
Removed	31	20	18
Fall River			
Original	26	24	12
Removed	31 $\frac{2}{3}$	21 $\frac{1}{3}$	12
Essex			
Salem			
Original	28	15	12
Removed	30 $\frac{1}{3}$	17	9
Lawrence			
Original	29	18	12
Removed	31	20	12
Newburyport			
Original	32	6	6
Removed	8	6	6
Franklin			
Original	10 $\frac{1}{2}$	7	8
Removed	11	9	4
Hampden			
Original	27	16	9
Removed	32 $\frac{1}{3}$	13 $\frac{1}{3}$	9
Hampshire			
Original	12	10	10
Removed	6	10	6
Middlesex			
Cambridge			
Original	37	31	23
Removed	39	26	11
Lowell			
Original	25	24	16
Removed	29	26	7
Norfolk			
Original	25	15	12
Removed	26	19	12
Plymouth			
Plymouth			
Original	37	7	11
Removed	40	9 $\frac{1}{2}$	10
Brockton			
Original	39	10	10
Removed	39 $\frac{1}{2}$	11	11

	July 1, 1956	July 1, 1957	July 1, 1958
Suffolk ⁴			
Original	32	30	12
Removed	32 $\frac{3}{8}$	15	12
Worcester			
Original	39	11	9
Removed	39 $\frac{1}{2}$	13	11
Fitchburg			
Original	31	28	12
Removed	37 $\frac{1}{2}$	29 $\frac{1}{2}$	12

TABLE III

Number of Days That Superior Court Justices Sat

	1954-55	1955-56	1956-57	1957-58
Civil	4,437	4,381 $\frac{1}{2}$	4,297 $\frac{1}{2}$	5,464
Criminal	1,272 $\frac{1}{2}$	1,099 $\frac{1}{2}$	1,060	1,153 $\frac{1}{2}$
Totals	5,619 $\frac{1}{2}$	5,481	5,357 $\frac{1}{2}$	6,597 $\frac{1}{2}$

From the foregoing table it appears that Superior Court justices sat an average of 206 days each or 41 five-day weeks, against 167 days each or 33 $\frac{1}{2}$ five-day weeks for the preceding year, and 171 days or 34 five-day weeks for the year before that.

TABLE IV

Number of Days That District Court Judges Sat
in the Superior Court

	1954-55	1955-56	1956-57	1957-58
Motor tort			1,411	1,938
Criminal	498	558	537	600
Totals	498	558	1,948	2,538

§23.4. **Additional Superior Court justices.** Chapter 370 of the Acts of 1958, approved on June 6, 1958, added six justices to the Superior Court, thereby increasing its membership to thirty-eight. This enlargement of the court, the first since 1925, was the largest single increase at any one time in the court's history, the next largest additions having been three each in 1902 and 1911.

§23.5. **Repeal of the Fielding Act.** The Fielding Act, which has required all motor tort actions to be started in a District Court in the

⁴ In Suffolk County, the category of removed cases seems to include only motor vehicle torts. These torts, however, make up the bulk of removals. See Table VI of the District Court statistics *infra*.

hope that a substantial number of such actions would stay there, was repealed by Section 1 of Chapter 369 of the Acts of 1958, effective September 1, 1958. Originally enacted in 1934, repealed in 1943, re-enacted in 1954, and now repealed again, one may confidently state that the Fielding Act has ended its rotating existence and has vanished into legal space. Recent experience with the act has shown that it was not significantly reducing the number of removals.

§23.6. The Transfer Act. Another important statute affecting the Superior Court was the Transfer Act, so called, being Section 2 of Chapter 369 of the Acts of 1958, effective September 1, 1958. In order to lighten the workload of the Superior Court, the Transfer Act authorizes the Superior Court, on its own motion or on that of a party, "after determination . . . that if the plaintiff prevails, there is no reasonable likelihood that recovery will exceed one thousand dollars [to] transfer for trial any action of tort or contract . . ." to an appropriate District Court where the case will be tried by a full time justice. "Any party to the action aggrieved by the [District Court] finding or decision may as of right have the case retransferred for determination by the Superior Court." There the District Court finding or decision will be prima facie evidence. Requests for retransfer and claims for jury trial after retransfer must be filed or renewed within a stated time.

Unlike an auditor hearing a case under an order of reference, a District Court judge hearing a case under the Transfer Act is not required to accompany his decision or finding with a finding of supporting facts. Thus there is no basis for a recommittal of a District Court determination in a transferred case for correction of alleged errors. A corollary is that claims for a report and requests for rulings at the trial of a transferred case in a District Court will have no standing although, of course, requests for rulings may serve as a helpful guide to a District Court judge in making a correct decision.

As a supplement to the Transfer Act, the Superior Court has adopted a new rule, designated Rule 33A, applicable to all contract or tort actions entered after September 1, 1958 in which the ad damnum exceeds one thousand dollars. The rule provides that within two months after issues are joined, or within such further time as the court may allow, not to exceed six months after issues are joined, the plaintiff shall file with the clerk a statement setting forth the facts in full and itemized detail upon which the plaintiff then relies as constituting the damages. Failure to file the statement will be the equivalent of a statement that the evidence then available to the plaintiff would not warrant a reasonable likelihood that recovery will exceed one thousand dollars if the plaintiff prevails.

Administrative problems under the Transfer Act will be presented by cross actions in which one action standing by itself would be subject to transfer to a District Court while the other action would not be subject to transfer. There will be similar questions in consolidated cases and in actions involving multiple plaintiffs. Presumably, if any one

of a single group of actions would not be subject to transfer, the Superior Court, in the exercise of its allowable discretion under the act, will retain the entire group.

C. THE DISTRICT COURTS

§23.7. **Jurisdiction.** Chapter 138 of the Acts of 1958 extended the criminal jurisdiction of the District Courts to include conspiracies, offenses hitherto excluded from District Court jurisdiction except in cases of contempt involving conspiracy as an element of the wrong.¹

§23.8. **The full-time District Court system: Business.** In the first year of operation of the reorganized District Courts, full-time judges were able to hear all full-time matters tried. Judicial assignments were marked by efficiency on the part of the Administrative Committee of the District Courts and by excellent cooperation on the part of the full-time judges. John A. Daly, the Executive Secretary to the Justices of the Supreme Judicial Court, has reported that the prestige of the District Courts has already increased.¹ A trend toward a diminishing number of trials in the District Courts nevertheless continues, as appears in the following table, much of the decrease from 1954-1955, however, being due to a reduction in the trials of summary process actions following the 1955 repeal of rent control with its litigation creating limitations on evictions.

TABLE V²

Number of District Court Trials (Other than Boston Municipal Court)

1954-1955	8,732
1955-1956	8,170
1956-1957	7,957
1957-1958	7,701

With the exception of a slight reduction in the number of small claims cases, the number of District Court entries continued to grow.

In the Boston Municipal Court in 1957-1958, there were 9546 motor tort entries, of which 3766 were removed to the Superior Court. Adding these figures to the totals of the other District Courts, the numbers of such entries were 37,660 and 18,124 respectively. The percentage of removals was thus 48 percent, against 50 percent for 1957 and 53 percent for 1956. With the repeal of the Fielding Act, these per-

§23.7. ¹ *Berlandi v. Commonwealth*, 314 Mass. 424, 50 N.E.2d 210 (1943).

§23.8. ¹ Executive Secretary's 1957-1958 Annual Report, p. 23, par. 74 (mimeo.). This report will be published as Public Doc. No. 166.

² All District Court figures, except for the Boston Municipal Court, were compiled by the Administrative Committee of the District Courts. The Boston Municipal Court figures were compiled separately by that court.

TABLE VI

District Court Business (Other than Boston
Municipal Court)

	<i>1954-55</i>	<i>1955-56</i>	<i>1956-57</i>	<i>1957-58</i>
Civil writs entered	63,798	73,868	75,993	79,817
Removals to the Superior Court	9,248	13,569	14,409	16,100
Motor tort entries	20,104	26,276	27,630	28,114
Motor tort removals	7,756	11,965	12,291	14,358
Criminal cases begun	202,126	201,730	223,760	236,519
Small claims	70,877	68,153	68,546	68,281
Juveniles under 17	6,934	8,169	9,204	10,235
Parking tickets returned	641,021	751,606	817,488	865,912

centages standing by themselves will have no significance by way of comparison with motor tort removals in the future.

Except for summary process matters, the ratio of trials to entries in the District Courts remained about constant, as the following table indicates.

TABLE VII

Ratio of Trials to Entries in District Courts
(Other than Boston Municipal Court)

	<i>1954-55</i>	<i>1955-56</i>	<i>1956-57</i>	<i>1957-58</i>
Summary process	44%	38%	36%	31%
Motor vehicle tort cases not removed	18%	14%	14%	15%
Other torts	15%	15%	14%	12%
Contract	7%	6%	7%	6%
Other	17%	18%	20%	21%

The overall percentage ratio of trials to entries for 1957-1958 was 12 percent, against 13 percent for the preceding year and $13\frac{1}{2}$ percent for the year before that. In the Superior Court, the ratio of trials to entries was 8.7 percent.

§23.9. Uniform Reciprocal Enforcement of Support Act. Results of three years experience of the District Courts with the Uniform Reciprocal Enforcement of Support Act are reflected in the following table including all District Courts other than the Boston Municipal Court.

Chapter 239 of the Acts of 1958 amended the Uniform Reciprocal Enforcement of Support Act by permitting easy transfer of a proceeding from one District Court to another for hearing or enforcement.

TABLE VIII

Uniform Reciprocal Enforcement of Support Act Cases

	1955-56	1956-57	1957-58
Number of cases initiated	840	826	977
Number of cases received from other states	351	345	396
Amount collected	\$318,407.29	\$601,370.86	\$822,162.75

Each District Court having jurisdiction of a proceeding is moreover given independent authority to enforce a duty of support even though another District Court has already issued a support order and has continuing jurisdiction.

§23.10. **Six-member juries.** Beginning on July 1, 1957, six-member juries were authorized on a three-year experimental basis in the Central District Court of Worcester. All available testimony to date certifies to their success.¹ They are well patronized by the Worcester bar. In his 1957-1958 Annual Report, John A. Daly, Executive Secretary to the Justices of the Supreme Judicial Court, recommends their extension to certain other district courts.

D. PROBATE COURTS

§23.11. **Jurisdiction.** Chapter 223 of the Acts of 1958 confers on the Probate Courts equity jurisdiction of property controversies between divorced persons after a divorce decree has become absolute. This limited grant of jurisdiction may be useful when a divorce has severed a tenancy by the entirety and has converted it into a tenancy in common.

§23.12. **Forms and rules.** On April 1, 1958, uniform probate forms became effective throughout the fourteen counties of the Commonwealth.

Revised Probate Rules were prepared during the 1958 SURVEY year and have been submitted to the Supreme Judicial Court for approval.

E. JUDICIAL PENSIONS

§23.13. **Effect of promotion.** The 1956 SURVEY reviewed the development of judicial pensions through the 1956 legislation conditioning pensions of judges appointed to their respective positions after July 31, 1956 on prompt retirement after pension rights accrued.¹

§23.10. ¹ Executive Secretary's 1957-1958 Annual Report, pp. 24 et seq., pars. 74-78 (mimeo.); Cronin, Six Member Juries in District Courts, 2 Boston B.J. No. 4, p. 27 (1958).

§23.13. ¹ 1956 Ann. Surv. Mass. Law §23.19.

The 1957 SURVEY discussed the anomaly in the 1956 legislation whereby a judge holding office on July 31, 1956, and later promoted to a higher judicial position, was treated as a new judge, as far as the prospective operation of the act was concerned, but was nevertheless required to count his prior judicial service in determining the moment when he had to retire or lose his pension. As a result, such a judge was in a worse pension status than before his promotion. 1957 legislation, discussed in the SURVEY for that year, eliminated this attrition of pensions for justices of the Supreme Judicial Court and Superior Court holding office on July 31, 1956 and later elevated.² Chapter 341 of the Acts of 1958 eliminated it for like judges of all other courts.

² 1957 Ann. Surv. Mass. Law §34.5.